

RECORDATION NO. 20867 FILED

SEP 12 '97

10-51 AM

LAW OFFICES
MILES & STOCKBRIDGE

A PROFESSIONAL CORPORATION

10 LIGHT STREET

BALTIMORE, MARYLAND 21202-1487

TELEPHONE 410-727-6464

FAX 410-385-3700

CAMBRIDGE, MD
COLUMBIA, MD
EASTON, MD
FREDERICK, MD

MCLEAN, VA
ROCKVILLE, MD
TOWSON, MD
WASHINGTON, D.C.

Writer's Direct Dial
(410) 385-3420

September 11, 1997

VIA FEDERAL EXPRESS

Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001
ATTN: Ms. Janice Fork, Recordation

RECEIVED
SURFACE TRANSPORTATION
BOARD
SEP 12 10 51 AM '97

Re: **Marietta Industrial Enterprises, Inc.**

Dear Ms. Fork:

Enclosed for recordation as a primary document pursuant to the provisions of 49 U.S.C. § 114301(a) are one original and one notarized copy of the following document:

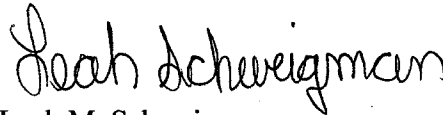
Memorandum and Confirmation of Financing and Security Agreement by Marietta Industrial Enterprises, Inc. (Box 179-1A, Marietta, Ohio 45750) and NationsBank, N.A. (c/o NationsBank Business Credit, 100 South Charles Street, Baltimore, Maryland 21201).

Also enclosed is this firm's check in the amount of \$24.00 to cover the filing fee.

Please return evidence of filing to me in the enclosed, self-addressed stamped envelope once the document has been recorded.

Thank you for your assistance with this matter.

Very truly yours,



Leah M. Schweigman
Legal Assistant

/LMS

Enclosures

cc: David B. Thayer, Vice President

I HEREBY CERTIFY that the attached Memorandum and Confirmation of Financing and Security Agreement is a true and correct copy of the document.

WITNESS my hand and notarial seal, this 8th day of September, 1997.



Leah M. Schweigman
Leah M. Schweigman
My Commission Expires: 4/1/2001

MEMORANDUM AND CONFIRMATION OF **SEP 12 '97**
FINANCING AND SECURITY AGREEMENT**10-51AM**

THIS MEMORANDUM AND CONFIRMATION OF FINANCING AND SECURITY AGREEMENT (this "Agreement") is made this 8th day of September, 1997, by and between MARIETTA INDUSTRIAL ENTERPRISES, INC., a corporation organized under the laws of the State of Ohio (the "Borrower") and NATIONSBANK, N.A., a national banking association (the "Lender").

RECITALS

A. The Borrower and the Lender are parties to a Financing and Security Agreement dated September 5, 1997 (as amended, modified, restated, substituted, extended and renewed at any time and from time to time, the "Financing Agreement") pursuant to which the Lender has agreed to provide the Credit Facilities (as that term is defined in the Financing Agreement).

B. To secure the Credit Facilities and the other Obligations (as that term is defined in the Financing Agreement), the Borrower has, among other things, granted to the Lender a continuing, first priority security interest in and to the Borrower's Equipment (as that term is defined in the Financing Agreement) including, without limitation, all railcars, locomotives and other rolling stock.

C. A condition of the Lender's agreement to provide the Credit Facilities was that this Agreement be executed and delivered by the Borrower.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, receipt of which is hereby acknowledged, the Borrower agrees as follows:

1. The Borrower agrees that the Recitals above are a part of this Agreement. Unless otherwise expressly defined in this Agreement, terms defined in the Financing Agreement shall have the same meaning under this Agreement.

2. Without implying any limitation on the provisions of the Financing Agreement, to secure the Credit Facilities and other Obligations the Borrower hereby assigns, pledges and grants to the Lender, and agrees that the Lender shall have a perfected and continuing security interest in, and Lien on, and chattel mortgage on, the following property of the Borrower:

(a) the railcars, locomotives and other rolling stock described on EXHIBIT A attached to and made a part of this Agreement (collectively, the "Rolling Stock");

(b) all accessions, additions, fittings, accessories, special tools, and improvements thereto and substitutions therefor and all parts and equipment which may be attached to or which are necessary or beneficial for the operation, use and/or disposition of, whether now owned or hereafter acquired, and all substitutions and replacements of the Rolling Stock (all of the foregoing and the Rolling Stock collectively, the "Rail Collateral");

(c) all proceeds, rentals, casualty value payments or proceeds, settlement

payments or proceeds, settlement payments and requisition compensation from the sale, loss or other disposition of the Rail Collateral;

(d) all rights, claims and causes of action, if any, that the Borrower may have now or in the future against any manufacturer or rebuilder of the Rail Collateral (or any component thereof) or any other party, by Contract or otherwise, in respect of any defect in the Rail Collateral or any part thereof;

(e) any agreement now or hereafter entered into for leasing, use or hire of the Railcars to any third party, including, without limitation, the Leases, together with all of the Borrower's right, title, interest, claims and demand in, to and under said agreements, including all extensions, renewals and replacements thereof, together with all rights, powers, privileges, options, and other benefits of the Borrower, including, without limitation, the right to receive all notices, given consents, exercise any election or option, declare defaults and demand payments with respect thereto;

(f) all rent, issues, income, profits, damages and other moneys from time to time payable to or receivable by the Borrower in respect of the Rail Collateral;

(g) all proceeds (cash and non-cash) thereof; and

(h) all books and records relating to any of the foregoing.

3. Each and every right granted to the Lender in this Agreement or allowed it by law or equity shall be cumulative of each other and may be exercised in addition to any and all other rights of the Lender, and no delay in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any right preclude any other or future exercise thereof or the exercise of any other right. This Agreement is binding upon and shall inure to the benefit of the Borrower and the Lender, and their respective successors and assigns.

4. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted in accordance with the Laws of Maryland and applicable United States federal law.

5. This Agreement is one of the Security Documents (as that term is defined in the Financing Agreement).

IN WITNESS WHEREOF, the Borrower has executed this Agreement under seal as of the date and year first written above.

WITNESS:

David D. Downing

MARIETTA INDUSTRIAL ENTERPRISES, INC.

By William Scott Elliott (SEAL)
William Scott Elliott
Chairman of the Board, President and
Chief Executive Officer

EXHIBIT A TO MEMORANDUM AND CONFIRMATION
OF
FINANCING AND SECURITY AGREEMENT

1 GP35 Locomotive No. 2646, Serial No. 64M35